Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 96-6
To Permit Flexible Service Offerings	)	
in the Commercial Mobile Radio Services	)	

COMMENTS OF OMNIPOINT CORPORATION

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Omnipoint Corporation, by its attorneys, files these comments to address the issues raised in the Further Notice of Proposed Rule Making[1] ("FNPRM") in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

Omnipoint strongly supports the Commission's decision in the First Report (at ¶ 22) that "licensees should have maximum flexibility to provide fixed or mobile services or combinations of the two over spectrum allocated for CMRS services, including PCS, cellular, and SMR services." Omnipoint also agrees that, "[i]n light of the dynamic, evolving nature of the wireless industry . . . regulatory restrictions on the use of the spectrum could impede carriers from anticipating what services customers most need, and could result in inefficient spectrum use and reduced technological innovation." *Id.*

These policy considerations should also guide the Commission as it resolves the issues raised by the FNPRM. As discussed below, regulatory classification of fixed

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1 In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rule Making, WT Dkt. No. 96-6, FCC 96-283, 61 Fed. Reg. 43721 (Aug. 26, 1996). Hereinafter, we will refer to that part of the decision constituting the First Report and Order, as the "First Report."

services offered by PCS licensees should follow the same deregulatory model laid down by the 1993 Budget Act amendments. Specifically, fixed PCS services should be subject to the same forbearance from Commission regulation as established in the Second Report and Order.[2] State regulation of such services is preempted by the Communications Act. State authority applies to PCS only after the state has made a sufficient demonstration under the Section 332 "substantial substitute" test.

DISCUSSION

I. Flexible PCS Incorporates Both Fixed and Mobile Services

As Omnipoint argued in its initial comments in this proceeding, PCS has always uniquely embraced the concept of market-driven wireless services that are not constrained by regulatory definitions of what is "mobile" or "fixed." At ¶ 49 of the FNPRM, the Commission correctly identifies that a key to interpreting the regulatory treatment of fixed PCS services is a proper understanding of the statutory definition of "mobile services." Section 332 of the Communications Act preempts state rate and market entry regulation of "mobile service" providers, and the Commission's statutory forbearance authority extends to "[a] person engaged in the provision of a . . . commercial mobile service . . . ." 47 U.S.C. § 332(c)(1) & (3)(A).

In Omnipoint's view, Section 332 of the Communications Act preempts the states from regulation of fixed PCS rates or market entry because the statutory definition of "mobile services" includes *all licensed PCS* services. In addition, state regulation of fixed services should also be preempted under the "inseverability" doctrine because such regulation would pose an unworkable regulatory paradigm for the provision of PCS, would

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2 Second Report and Order, GN Dkt. No. 93-252, 9 FCC Rcd. 1411 (1994).

substantially frustrate legitimate federal policies for interstate wireless services, and would subject a primarily interstate service to a jumble of clashing state regulation.[3]

A. "Mobile Service" Includes Any Service Offered Pursuant To A PCS License

The term "mobile service" is clearly defined by the Communications Act to include *all services* offered through the use of licensed PCS: "The term 'mobile service' . . . includes . . . (C) any service for which a license is required in a proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding." 47 U.S.C. § 153(27) (hereinafter referred to as the "Subpart C Clause"). The plain language of the general statutory definition of "mobile service," which requires the use of "mobile stations," in no way limits the Subpart C Clause, which includes any licensed personal communications service within the meaning of "mobile service."

The statutory language supports this interpretation in at least two ways. First, use of the word "includes" must mean that licensed PCS is incorporated within the definition of "mobile service," and is not merely an example of what *might be* a "mobile service." While Congress could have made the issue subject to Commission discretion (for example, by using the phrase "and may include" or "such as"), Congress chose the commanding word "includes." As courts and one noted treatise on statutory construction have observed, "' the word 'includes' is usually a term of enlargement, and not of limitation . . .."[4] By the same token, the word "includes" cannot reasonably be interpreted to mean that the general

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3 *See, e.g.,* State of California v. FCC, 567 F.2d 84, 86 (D.C. Cir. 1977) (California I) ("inconsistent state regulations could frustrate the congressional goal of developing a 'unified national communications service'"), *cert. denied,* 434 U.S. 1010 (1978).

4 Sutherland, Statutory Construction, 5th ed., § 47.07, *citing* Argosy Ltd. v. Hennigan, 404 F.2d 14 (5th Cir. 1968).

definition of "mobile service" restricts the more specific Subpart C Clause.[5] Second, the statutory language specifically calls for the "mobile service" definition to encompass "*any service*" using licensed PCS (emphasis added). The Commission must give meaningful interpretation to this statutory language crafted in the most broad and all-inclusive terms possible.[6]

The alternative interpretation, suggesting that the amendment in the 1993 Budget Act was merely to offer examples of what *may* be deemed a "mobile service," is without merit. *See* FNPRM at ¶ 49. On its face, the statutory language "includes . . . . any service" is a specific command; it does not direct the Commission, the courts, or the states to apply their own notions of what is or should be deemed a "mobile service." Likewise, if Congress had only meant for the Subpart C Clause to serve as an example of the more general "mobile service" definition, it would have used the language "could include," "may include," or even "for example." Congress chose not to take that approach in the statutory language.[7]

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5 The Commission's reference, at n. 116 of the FNPRM, to the maxim of *ejusdem generis* is inapposite. *Ejusdem generis* provides that, where general words either precede or follow more specific words in a statute, "the general words are construed to embrace only objects similar in nature to those objects enumerated by the . . . specific words." Sutherland, Statutory Construction, 5th ed., § 47.17. In this case, the general words are the general definition of "mobile services" which is followed by the more specific Subpart C Clause. Since the Commission seeks to interpret the specific words of the statute, and not the general words, applying *ejusdem generis* in this case would turn the maxim on its head.

6 Babbitt v. Sweet Home Chapter of Communities For A Great Oregon, 115 S. Ct. 2407, 2417 (1995) ("An obviously broad word that the Senate went out of its way to add to an important statutory definition is precisely the sort of provision that deserves a respectful reading.").

7 MCI Telecommunications Corp. v. AT&T, 114 S. Ct. 2223, 2232 n.4 (1994) (FCC and courts "are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes.").

The legislative history also confirms that Congress did not mean for the Subpart C Clause to be interpreted as a mere example to be neutered subsequently by the Commission or the states. The House Report explains that the House bill provisions, later adopted by the Conference Committee, changed the "definition of 'mobile service' in section 3(n) by . . . *adding* to it a definition of licensed personal communications services . . . ." H.R. Rep. No. 111 103rd Cong., 1st Sess. 262 (1993) (emphasis added); H.R. Conf. Rep. No. 213 103d Cong., 1st Sess. 497 (1993). By *adding* PCS to the "mobile service" definition, Congress meant to supply a new class to the definition, not merely an illustration of the general definition.

Moreover, the Subpart C Clause amendment to the "mobile service" definition comports with the overarching Congressional intent of the 1993 Budget Act amendments to deregulate CMRS and inject new competition into local markets through the rapid introduction of PCS. In 1993, Congress modified the Communications Act to prohibit state regulations that impede the rapid introduction of competitive wireless services, and obligated the Commission "to establish a Federal regulatory framework to govern the offering of all commercial mobile services."[8] This intent is evidenced by the statutory provisions preempting state regulation (47 U.S.C. § 332(c)(3)(A)) enabling the Commission to forbear from Title II regulation (id. at § 332(c)(1)), and establishing auction authority for efficient and expeditious allocation of licenses (id. at § 309(j)).[9] At the time of the 1993 Budget amendments, the Commission itself had described PCS as including

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8 H.R. Conf. Rep. No. 213 103d Cong., 1st Sess. 490 (1993).

9 The Commission's own decisions articulate in detail Congress' pro-competitive, deregulatory intent behind the 1993 Budget Act amendments. *See* Second Report and Order, 9 FCC Rcd. at 1418-22; *Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers,* Report and Order, PR Dkt. No. 94-106, 10 FCC Rcd. 7025 (1995) (denying state's request for authority to regulate CMRS operators; in passing Section 332, Congress evinced clear preference for market forces -- not state regulation -- to shape development of CMRS).

fixed as well as mobile services.[10] Given the context of the 1993 Budget Act amendments, the modification to the "mobile service" definition must mean exactly what it says -- any PCS service is a "mobile service."[11]

B. State Regulation Of PCS Fixed Services Should Be Preempted Because It Would Substantially Frustrate Federal Policies And Interfere With Interstate Service

Both the Commission and Congress have established that multistate PCS networks are an essential element to achieving vibrant, competitive wireless competition in this country. Multistate MTA license areas were chosen for PCS in order "to promote the rapid deployment and ubiquitous coverage . . . follow[ing] the natural flow of commerce,"[12] to "spur competition,"[13] and to "allow licensees to tailor their systems to the natural geographic dimensions of PCS markets."[14] Significantly, 41 of the 46 MTA license areas in the continental U.S. include the territory of more than one state. The Commission's auction process encourages operators to establish networks that cover several multi-state

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10 Even in the nascent stages of PCS, the Commission noted and encouraged PCS fixed wireless experimentation for competition with the LECs' traditional wireline monopoly. *See* First Report and Order, ET 92-9, 7 FCC Rcd. 6886, 6886 (1992) (PCS experimental advances included "mobile facsimile, wireless private branch exchange, and wireless area networks"). Indeed, in reallocating the 2 GHz band for broadband PCS, the Commission noted that "it is important that the emerging technology bands be able to meet the requirements of a significant number of new services and to support the operation of mobile, *as well as fixed*, operations." Id. at 6888 (emphasis added).

11 Fawn Min. Corp. v. Hudson, 80 F.3d 519, 521 (D.C. Cir. 1996) ("When the statute's text makes its application reasonably clear, the meaning of the text should control."); Robinson v. Shell Oil Co., 70 F.3d 325 (4th Cir. 1995), *cert. granted*, 116 S.Ct. 1541 (1996), ("If a statute defines a term in its definitional section, then that definition controls the meaning of the term wherever it appears in the statute.").

12 Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

13 Id. at 4987-88.

14 Second Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7700, 7732 (1993).

BTA and MTA areas: "the values of most broadband PCS licenses will be significantly interdependent because of the desirability of aggregation across . . . geographic regions."[15] Multistate MTA service areas fulfill Congressional goals for PCS regulations to "encourage competition and provide services to the largest number of people." 47 U.S.C. § 332(a)(3). MTA service areas also fulfill Congressional objectives for the rapid introduction of PCS to the American public, and to "advance a seamless national network."[16] Consistent with these federal policies for PCS on a multi-state basis, Omnipoint and many other PCS operators have designed their networks to optimize the efficiency associated with regional license areas that span several state boundaries or traditional exchange areas.[17] The provision of fixed services, from a network perspective, can and should employ those same efficiencies, but for state regulatory requirements.

As an initial matter, it must be recognized that the PCS network of Omnipoint and other carriers does not *per se* differentiate between the type of end-user equipment (mobile or fixed) with which it interfaces. The network is designed to handle both fixed and mobile applications, and will adjust and change as consumer usage patterns develop and change. Therefore, the notion that mobile consumer applications are handled differently than fixed consumer applications, or that mobile PCS calls are more interstate than fixed PCS calls, is completely fictitious and, as such, is not accounted for in current PCS networks.

State regulation of fixed PCS services would adversely affect the ability of PCS providers to integrate mobile and fixed wireless services. As the FCC has stated, it is

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15 Fifth Report and Order, PP Dkt. No. 93-253, 9 FCC Rcd. 5532, ¶ 31 (1994).

16 1993 Omnibus Budget Reconciliation Act, § 6002(d); H.R. Rep. No. 103-111, at 261.

17 It is beyond doubt that PCS operators have expended massive amounts of money, time, and opportunity to develop PCS systems that are designed to take advantage of the efficiencies of an interstate system. These operators, and their investors, have placed significant reliance on the Commission's promise of a pro-competitive regulatory scheme.

reluctant "to discourage development of such integrated networks by subjecting carriers to multiple layers of regulation."[18] FNPRM at ¶ 40. Where state regulation substantially frustrates federal goals, the state regulations are preempted.[19]

In the case of fixed PCS services, expansion of state regulation will have both direct and indirect impacts on PCS operators that will affect all aspects of their service. The introduction of state rate and market entry regulation would impose several immediate and direct burdens on PCS operators, including: (1) the filing of state tariffs, subjecting the carrier to rate review and state complaint procedures; (2) the state certification process; and (3) other various state requirements, such as resale discounts, universal service obligations, reporting requirements, and public utility taxation. These burdens alone are likely to delay service to the public and reduce the financial incentives to offer unique and competitive alternatives to the wireline incumbent. With multi-state MTAs and BTAs for licensed PCS, a PCS operator with a single integrated network would be subject to compliance with a host of disparate state approaches to rate and market entry regulation of fixed services.

In addition to these direct effects, state regulations on the fixed application portion of the PCS operator's business would result in several significant consequences that impair the operator's entire business plan, both fixed and mobile. First, given that it would offer both a nonregulated (mobile) and regulated (fixed) service, the carrier would need to adopt

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18 *Compare* North Carolina Utilities Commission v. FCC, 537 F.2d 787, 793 (4th Cir.), *cert. denied,* 429 U.S. 1027 (1976) (NCUC I) (state regulatory impediments "substantially affect" both the conduct and development of interstate communications); North Carolina Utilities Commission v. FCC, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (NCUC II) (the court held that the Commission did not act prematurely in preempting state actions that merely threatened to impose restrictions on the interconnection of customer-provided equipment because the market was expanding rapidly and was being affected adversely by the states' threats of new restrictions).

19 *See* State of California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California II) (court affirmed FCC preemption of state regulation because state requirements would essentially negate the goals of the FCC's more permissive regulatory policies), *cert. denied,* 115 S. Ct. 1427 (1995).

cost allocation methodologies in order to responsibly meet state demands for rate regulation.[20] In addition, to know which callers are subject to the state regulatory regime, PCS operators would need to develop some mechanism to track and isolate the calls that are from fixed locations and those that are not. Not only are PCS networks not designed to perform such tracking functions,[21] it is entirely unclear how such tracking could be accomplished without significant re-design of the very nature of PCS networks.

State regulation of fixed services would also interfere with otherwise market-driven PCS service offerings and competitive pricing. For example, state rate regulation of the fixed portion of the services would discourage the bundled offering of fixed and mobile PCS applications because bundling would create difficult cost allocation issues and would undoubtedly involve the state in rate regulation of the mobile portion of the bundled service. Faced with state regulatory burdens and associated inflexibility, PCS operators would be encouraged to unbundle offerings and/or not offer fixed services at all, even though consumers might otherwise have demanded such bundled offerings. These constrictions on the marketing of mobile PCS services flatly contradict the intent of the Section 332 preemption.

Moreover, where federal and state aspects of a service are inseverable, especially if the service is primarily federal in nature, state regulation is preempted by the Communications Act.[22] Given that PCS services are currently licensed on a multistate

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20 Without an adequate cost allocation, complainants and the states would undoubtedly argue that the PCS operator is unfairly cross-subsidizing its regulated service with revenues from the non-regulated service, or, alternatively, it is charging regulated customers for the cost of supporting infrastructure used in the nonregulated activities.

21 In fact, Omnipoint charges both fixed and mobile subscribers the same per-minute rates for airtime.

22 *See, e.g.*, Louisiana Public Service Comm'n v. FCC, 476 U.S. 355 (1986); California I, 567 F.2d at 85; California II, 919 F.3d at 93; NCUC I, 537 F.2d at 794-795; NCUC II, 552 F.2d at 1042.

service area basis, all PCS traffic and services, including fixed services, are interstate by their very nature.[23]

This Commission has recognized that even local calling areas for CMRS should be based on the multistate MTA, and not intrastate local calling areas used by the traditional incumbent LEC. Indeed, the Commission concluded "that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation.[24] State regulation, however, would require operators to engage in the extremely infeasible endeavor of dismantling their MTA-based network and building a new one based on state boundaries in order that intrastate traffic can be recorded.[25] This is simply contrary to the Commission's own MTA-based plan for PCS.

As a practical matter, it would be nearly impossible to evaluate when a particular call or service offering is truly intrastate or fixed. Because the same network serves both mobile and fixed locations according to the MTA boundaries of the Commission's license (or an intregated system that spans across several MTAs/BTAs), base station network deployment has focused on efficient, low cost implementation without regard to state

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23 Because state boundaries and local wireline exchange areas have no logical applicability for the emerging wireless carriers, Omnipoint has also urged the Commission to permit voluntary area code overlays that cover MTA-based regions. Petition for Reconsideration and Clarification of Omnipoint Communications, Inc., CC Dkt. No. 96-98, et al., (filed Oct. 7, 1996).

24 First Report and Order, CC Dkt. No. 96-98, et al., FCC 96-235 at ¶ 1036 (rel. Aug. 8, 1996), *appeal pending*, Iowa Utilities Board v. FCC (8th Cir.); *see also* 47 C.F.R. § 51.701(b)(2) ("local telecommunications traffic" is defined as "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area").

25 *See, e.g.*, California II, 39 F.3d at 932 (state requirements that would result in separation of facilities for services offered both interstate and intrastate would essentially negate FCC's goal of allowing integrated provision of such services).

boundaries.[26] For example, in some cases, Omnipoint's radio base stations serve users across state boundaries (*e.g.*, Northern New Jersey base stations serve New York City customers, and vice-versa). Further, at least for GSM-based PCS systems, the particular base station that communicates with a given fixed customer station is subject to change based on the traffic demands of each base station. A fixed customer in New York City could be serviced by base stations located either in New York City or in New Jersey, depending on base station capacity issues and the most efficient base station available at the time of the communication. Moreover, by using mobile handset docking cradles or other customer equipment, the end-user can freely turn a mobile station into a fixed station without the PCS operator's knowledge or consent. These base station design efficiencies of the network, and the deregulated customer premises market, make it virtually impossible to identify which customers are intrastate fixed users of the network.

Calls from fixed user equipment are also routed through an interstate network in exactly the same way as calls from mobile equipment. Omnipoint, for example, purchases all of its dedicated circuits based on federal interstate tariffs, and not state tariffs. All traffic from fixed as well as mobile end user locations is currently routed interstate to the central Omnipoint switches located in New Jersey. These switch decisions are made on the basis of optimizing technical and economic efficiency; state regulation that would require a different switch or network configuration necessarily detracts from the efficient, innovative, and market-driven PCS which Congress had envisioned.[27]

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26 *Cf.* NARUC v. FCC, 746 F.2d 1493, 1498 (D.C. Cir. 1984) (in affirming FCC jurisdiction over intrastate facilities used to complete interstate calls, the court declared that, as a general matter, the nature of the communications which pass through the facilities is determinative of federal or state jurisdiction rather than the location of the facilities) (citations omitted).

27 *See*, H.R. Rep. No. 111 103d Cong., 1st Sess. 260 (1993) ("to foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an

For these reasons, the Commission should permit PCS licensees maximum flexibility to offer integrated fixed or mobile services as consumers demand those wireless services. Such a regulatory scheme would also be consistent with Congressional goals for a "seamless national network."

II. Regulatory Classification Of Fixed PCS Should Be Reconsidered Only When It Becomes A Substantial Substitute For Wireline Service

Omnipoint maintains that a PCS operator's fixed services are preempted from state rate and market entry regulation because they are governed by the regulatory scheme of Section 332 of the Communications Act and Parts 20 and 24 of the Commission's rules. As Omnipoint argued in its comments and reply comments that led to the First Report, states should follow the petition process articulated in Section 332(c)(3) of the Communications Act, and as implemented by the Commission's rules,[28] when they seek to regulate wireless operators. This process requires states to demonstrate that either (1) market conditions fail to protect subscribers adequately and rates are unjust and unreasonable or (2) such market conditions exist and the service is a replacement for landline service for a substantial portion of the LEC service in the state.

While the Commission's proposal for a rebuttable presumption that fixed services are regulated as CMRS is certainly a better solution than outright state regulation, it also raises troubling issues of regulatory uncertainty. The case-by-case approach proposed by the Commission could well subject PCS operators to needless claims against their fixed services by both state regulators and in-region wireline providers that would use the Commission's processes in an anti-competitive manner to stall the introduction of fixed PCS services. Under the Commission's proposal, the possibility of litigation seemingly attaches even when the PCS operator's fixed service is first introduced and/or represents a

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integral part of the national telecommunications infrastructure, new section 332(c)(3)(A) also would preempt state rate and entry regulation of all commercial mobile services").

28 47 C.F.R. § 20.13.

tiny fraction of the total local lines offered in the market, thus having a chilling effect on the mere introduction of such services.

Moreover, the "substantial use" test would better meet Congressional concerns that CMRS operators be given a chance to establish a competitive foothold in telecommunications before they are regulated like a traditional LEC or incumbent LEC. As the Conference Report notes of the "substantial use" test,

> the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumer can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these alternative means of obtaining basic telephone service simply because they employ radio as a transmission means.

H. Conf. Rep. No. 213 103d Cong., 1st Sess. 493 (1993). With the passage of the 1996 Telecommunications Act, Congress recently reaffirmed the federally-based Section 332 regulatory regime for CMRS. 47 U.S.C. §§ 253(e) (statutory provision that prohibits state market entry barriers also maintains CMRS preemption), 153(26) ("local exchange carrier" definition excludes CMRS providers). The Commission itself has recently decided that CMRS operators are not to be treated as "local exchange carriers" by either the Commission or the states. First Report and Order, CC Dkt. No. 96-98, at ¶¶ 1004-05.

These legislative and Commission actions reflect a common concern that PCS, as a nascent industry, should be given a period of time to develop unfettered by significant federal regulatory burdens by preempting state regulation. Rooted in the statutory obligations to "encourage the provision of new technologies and services to the public,"[29] both Congress and the Commission have developed federal interests in nascent and

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29 47 U.S.C. § 157(a).

innovative communications services, including cable television,[30] SMATV regulation,[31] enhanced services,[32] and customer premises equipment.[33] The preemption of fixed PCS services, at least until they become a substantial substitute for wireline LEC service, will help to foster new wireless alternatives that have yet to even emerge in the marketplace. Overregulation of fixed PCS services at this stage of its development, even before it has been fairly introduced into the marketplace, can only deter its chances of success. At the very least, the Commission must let the service develop first, and then decide how it is to be regulated. Given that wireless carriers are already subject to comprehensive, yet pro-competitive, federal regulations that adequately protect the public interest,[34] it is premature to subject fixed PCS services to a panoply of different state regulations.

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30 Cable Communications Policy Act of 1994, P.L.R. 98-549.

31 Earth Satellite Communications, inc., 55 R.R. 2d 1427 (1983), *aff'd* N.Y. State Com'n on Cable Television v. FCC, 749 F.2d 804 (D.C. Cir. 1984).

32 47 C.F.R. § 64.702)(a) ("Enhanced services are not regulated under Title II of the [Communications] Act.").

33 Carter v. AT&T Co., 13 F.C.C.2d 420, *recon. denied*, 14 F.C.C.2d 571 (1968); Computer II Final Decision, 77 F.C.C. 2d 384, 387 (1980) (subsequent history omitted).

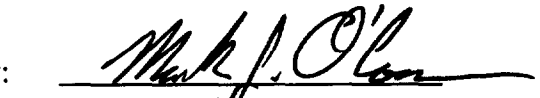
34 As Title II common carriers, PCS operators continue to be subject to the Commission's complaint processes and its rates, terms, and conditions of service must be just and reasonable. *See* Second Report and Order, 9 FCC Rcd. at 1475-93.

CONCLUSION

State regulation of fixed PCS services is preempted by federal statute and because PCS fixed services are integral and inseverable from the interstate PCS network. Equally important, however, are the federal policies to encourage innovative new services and to foster competition that will be served through preemption of state regulation.

Respectfully submitted,

OMNIPOINT CORPORATION

By: 

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